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RESIDENT COUNSEL

LOUISE M. PARENT
OF COUNSEL

September 15, 2014

Via ECF

Honorable Stuart M. Bernstein
United States Bankruptcy Court
One Bowling Green
New York, New York 10004

Re: *Securities Investor Protection Corporation v. Bernard L.
Madoff Investment Securities LLC.*, No. 08-1789 (SMB)

Dear Judge Bernstein:

I write on behalf of the defendants listed in the annex to this letter concerning the matters to be addressed at the conference scheduled for September 17, 2014 at 11:00 a.m. That conference was requested by Robinson B. Lacy, counsel for certain defendants, in his August 22, 2014 letter to the Court [ECF Docket No. 7766].

The defendants that join in this letter support Mr. Lacy's request that Your Honor schedule supplemental briefing to address how the Court should apply Judge Rakoff's recent Opinion and Order that bars the extraterritorial application of Section 550(a) of the Bankruptcy Code to the Trustee's claims under that section, and thus requires the dismissal, in whole or in part, of approximately 75 of the Trustee's pending lawsuits. *See Sec. Investor Prot. Corp v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, 513 B.R. 222 (S.D.N.Y. 2014) (the "Extraterritoriality Order"). The procedure Mr. Lacy proposes will best serve the interests of judicial efficiency and party economy.

We also urge the Court to reject the Trustee's suggestion in his August 28, 2014 letter [ECF Docket No. 7830] that Your Honor should first allow the Trustee to proceed with extensive pre-amendment discovery concerning defendants' "good faith" for the purpose of amending his complaints in an attempt to comply with Judge Rakoff's separate April 27, 2014 Opinion and Order (the "Good Faith Order"). That Order provides that the Trustee can recover

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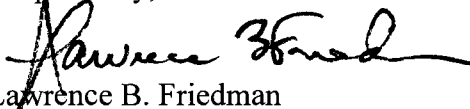
transfers to defendants under Section 550(a) of the Bankruptcy Code only if he pleads with particularity “*in his initial complaint*” that the transferee knew of the Madoff fraud or was willfully blind to it. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, 12 Misc. 115, 2014 WL 1651952, at *5 n.5 (S.D.N.Y. Apr. 27, 2014) (emphasis added).

First, Mr. Lacy’s proposal should result in a straightforward and swift conclusion to the Trustee’s many pending complaints that do not comply with the Extraterritoriality Order. Judge Rakoff made clear that these complaints should be dismissed where the alleged transfers involve foreign transferors and foreign transferees. Based on this ruling, scores of defendants are entitled to the prompt dismissal of the Trustee’s claims, which would pave the way for the “immediate appeal” from the Extraterritoriality Order that the Trustee purportedly desires. Trustee’s letter at 1. The Trustee’s alternative approach would needlessly and unfairly prolong the pending lawsuits for these defendants. If the Trustee wishes to re-plead in other cases, then he should provide the Court and the parties with his proposed amendments, so that they can address the legal sufficiency of the Trustee’s proposed pleadings, as the rules provide.

Second, the discovery the Trustee seeks with respect to “good faith” (to which he is not entitled in any event, as shown below) should not delay the dismissal of those defendants who are entitled to be dismissed under the Extraterritoriality Order. By the Trustee’s own admission, that discovery is irrelevant to defendants’ extraterritoriality defense. *See* Trustee’s Mem. Of Law In Supp. Of Omnibus Mot. For Leave To Replead Pursuant To Fed. R. Civ. P. 15(a) And Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) at 4, Aug. 28, 2014 [ECF Dkt. No. 7826] (“the Trustee also seeks an order for limited document discovery specifically *targeted to the issue of subjective good faith.*”) (emphasis added).

Third, although the Trustee’s motion is not scheduled to be addressed at the September 17 conference, Your Honor should know that defendants will demonstrate in the opposition they are currently scheduled to file next month that the Trustee is not entitled to the discovery he seeks unless and until he has first filed a complaint that complies with the Good Faith Order. As Judge Rakoff ruled, it is the Trustee’s burden to plead a claim that properly alleges the absence of good faith “*in his initial complaint.*” Good Faith Order, 2014 WL 1651952, at *5 n.5 (emphasis added). It would turn Judge Rakoff’s ruling on its head to allow the Trustee to take pre-amendment discovery to satisfy his burden of pleading a plausible claim. In addition, many defendants cannot be compelled to provide discovery before the Court adjudicates their personal jurisdiction dismissal motions.¹ Finally, if granted, the Trustee’s motion will require extensive motion practice concerning the foreign customer and data privacy rules that preclude much of the discovery that the Trustee seeks.

Respectfully,


Lawrence B. Friedman

¹ Nothing in this letter is intended or should be construed as a waiver of personal jurisdiction defenses by any defendant, which are hereby expressly reserved.

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cc: Regina L. Griffin, Esq.
Robinson B. Lacy, Esq.
Franklin B. Velie, Esq.
Marco E. Schnabel, Esq.
Howard L. Simon, Esq.
Matthew B. Lunn, Esq.

Annex to Letter of Lawrence B. Friedman dated September 15, 2014

Defendants Represented by Cleary Gottlieb on Behalf of Which this Letter is Submitted

BGL BNP Paribas S.A.
BNP Investment Partners Luxembourg S.A.
BNP Paribas (Suisse) S.A.
BNP Paribas Arbitrage SNC
BNP Paribas Bank & Trust (Canada),
BNP Paribas Bank & Trust Cayman Limited, BGL BNP Paribas Luxembourg S.A.
BNP Paribas S.A.
BNP Paribas Securities Services – Succursale de Luxembourg
BNP Paribas Securities Services S.A.
Citi Hedge Fund Services Limited
Citibank (Switzerland) AG
Citibank, N.A.
Citicorp North America, Inc.
Citigroup Global Markets Limited
Citivic Nominees Limited
Credit Agricole (Suisse) S.A.
Credit Agricole Corporate and Investment Bank
Credit Agricole S.A.
HSBC Bank (Cayman) Limited
HSBC Bank Bermuda Limited
HSBC Bank plc
HSBC Fund Services (Luxembourg) S.A.
HSBC Holdings plc
HSBC Institutional Trust Services (Bermuda) Limited
HSBC Institutional Trust Services (Ireland) Limited
HSBC Private Bank (Suisse) S.A.
HSBC Private Banking Holdings (Suisse) S.A.
HSBC Securities Services (Bermuda) Limited
HSBC Securities Services (Ireland) Limited
HSBC Securities Services (Luxembourg) S.A.
Securities & Investment Company BSC
Somers Dublin Limited
Somers Nominees (Far East) Limited

Other Defendants that Join in this Letter

Access International Advisors LLC
Access International Advisors Ltd.
Access Management Luxembourg SA (f/k/a Access International Advisors (Luxembourg)
SA) as represented by its liquidator Maitre Fernand Entringer
Access Management Luxembourg SA (f/k/a Access International Advisors
(Luxembourg) SA)
Access Partners SA as represented by its liquidator Maitre Fernand Entringer
Banca Carige S.P.A.
Banco Bilbao Vizcaya Argentaria, S.A. (BBVA)
Banco Itau
Bank Julius Baer & Co. Ltd.
Banque Internationale à Luxembourg (Suisse) S.A.
Banque Internationale à Luxembourg S.A.
Banque Pictet et Cie SA
Banque Syz & Co., SA
Barclays Bank (Suisse) S.A.
Barclays Bank S.A.
Barclays Private Bank & Trust Limited
Barfield Nominees Limited
Cathay Life Insurance Co., Ltd
CDP Tactical Alternative Investments
Claudine Magon de la Villehuchet, in her capacity as Executrix under the will of Thierry
Magon de la Villehuchet and individually as the sole beneficiary under the will of
Thierry Magon de la Villehuchet
Credit Suisse (Luxembourg) SA
Credit Suisse (UK) Limited
Credit Suisse AG
Credit Suisse AG, Nassau Branch
Credit Suisse AG, Nassau Branch LATAM Investment Banking
Credit Suisse AG, Nassau Branch Wealth Management
Credit Suisse International
Credit Suisse London Nominees Limited
Credit Suisse Nominees (Guernsey) Limited
Credit Suisse Wealth Management Limited
Elite Stability Fund Sicav as represented by its Liquidator Pierre Delandmeter
Elite-Stability Fund Sicav Stablerock Compartment
as represented by its Liquidator Pierre Delandmeter
Eurizon Capital SGR S.p.A.
Grosvenor Aggressive Growth Fund Ltd.
Grosvenor Investment Management Ltd.
Grosvenor Private Reserve Fund Ltd.,
Grosvenor Balanced Growth Fund Ltd.
Groupement Financier Ltd.
Guernroy Limited

Other Defendants that Join in this Letter

Hermes International Fund Limited
Inteligo Bank
Intesa Sanpaolo S.p.A.
KBC Investments Limited
Lagoon Investment Limited
Leon Flax
LGT Bank (Switzerland) Ltd.
LGT Bank in Liechtenstein Ltd.
Lion Global Investors Limited
Lloyds TSB Bank plc
M&B Capital Advisors Sociedad de Valores, S.A.
Mistral (SPC)
Multi-Strategy Fund Limited
Naidot Co.
Northern Trust Corporation
Patrick Littaye
Pierre Delandmeter
Quilvest Finance Ltd.
RBC Alternative Assets, L.P.
RBC Dexia Investor Services Bank S.A.
RBC Dexia Investor Services España S.A.
RBC Dexia Investor Services Trust
RBC Dominion Securities Inc.
Royal Bank of Canada
Royal Bank of Canada (Asia) Limited
Royal Bank of Canada (Channel Islands) Limited
Royal Bank of Canada (Suisse) S.A.
Royal Bank of Canada Trust Company (Jersey) Limited
Schroder & Co. Bank AG
Six Sis AG
SNS Bank N.V.
SNS Global Custody B.V.
Solon Capital
Thema Fund Limited
Thema International Fund plc
Thema Wise Investments Limited
UBS (Luxembourg) SA
UBS AG
UBS Deutschland AG
UBS Fund Services (Luxembourg) SA
UBS Third Party Management Company SA
Unifortune Asset Management Sgr Spa
Unifortune Conservative Fund
Zephyros Limited

Other Defendants that Join in this Letter

Zeus Partners Limited